

(H.J.R. 4)

CONSTITUTIONAL AMENDMENT A

RESOLUTION REVISING EXECUTIVE OFFICER SUCCESSION PROVISIONS

2007 GENERAL SESSION

SENATE: 27-0-2

HOUSE: 59-12-4

BALLOT TITLE

☐ **YES**

☐ **No**

Shall the Utah Constitution be amended to:

- modify and clarify how a vacancy in the office of Governor is filled;
- define when a vacancy occurs in the offices of Governor and Lieutenant Governor;
- modify the term of office of a person filling a vacancy in the office of Governor or Lieutenant Governor;
- modify and clarify the exercise of the powers of Governor when the Governor is temporarily disabled;
- modify and clarify how the disability of a Governor is determined;
- modify how a vacancy in the office of Lieutenant Governor is filled; and
- establish a process for determining the disability of a Lieutenant Governor?

IMPARTIAL ANALYSIS

Constitutional Amendment A amends provisions of the Utah Constitution relating to the filling of a vacancy in the offices of Governor and Lieutenant Governor, the process for determining the disability of the Governor and Lieutenant Governor, and the exercise of the powers of Governor when the Governor is temporarily disabled.

The following table compares the changes made by Constitutional Amendment A to the current provisions of the Utah Constitution.

| Topic | Current Utah Constitution | Changes made by Constitutional Amendment A |
|--|---|--|
| What constitutes a vacancy in the office of Governor | Does not define what constitutes a vacancy but provides for how the powers of the office of Governor are transferred in the case of the Governor's death, impeachment, removal from office, resignation, or disability, or if the Governor-elect fails to take office | States that a vacancy occurs when: <ul style="list-style-type: none">• the Governor dies, resigns, is removed by impeachment, ceases to reside in the state, or becomes permanently disabled; or• the Governor-elect fails to take office |
| What happens when there is a vacancy in the office of Governor | The powers and duties of Governor temporarily fall to the Lieutenant Governor | The Lieutenant Governor becomes Governor |

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| What happens when there is a vacancy in the offices of Governor and Lieutenant Governor at the same time | Senate President temporarily acts as Governor | Senate President becomes Governor |
| What happens when there is a vacancy in the offices of Governor, Lieutenant Governor, and Senate President at the same time | Speaker of the House of Representatives temporarily acts as Governor | Speaker of the House of Representatives becomes Governor |
| Term of the person who takes the place of the Governor | <p>The person exercises the powers and duties of or acts as Governor until;</p> <ul style="list-style-type: none"> the next general election; or in the case of the Governor's disability, the disability ceases | <p>The person becomes Governor and serves until:</p> <ul style="list-style-type: none"> the first Monday in January following the next regular general election, if the vacancy occurs during the first year of the Governor's term; or for the remainder of the unexpired term, if the vacancy occurs after the first year |
| Determining the disability of the Governor | Provides a process for determining the disability of the Governor or person temporarily acting as Governor | <p>Modifies and clarifies the process for determining the disability of the Governor or person temporarily acting as Governor</p> <p>Makes the process for determining disability apply also to determining the disability of a Governor-elect</p> |
| What happens when the Governor is temporarily disabled | <p>The powers and duties of the Governor fall to the Lieutenant Governor until the Governor's disability ceases</p> <p>It is unclear what would happen if the Lieutenant Governor becomes temporarily disabled while discharging the powers and duties of Governor during the Governor's temporary disability. One reading of the current Utah Constitution is that the Senate President would act as Governor and that, if the Senate President then becomes temporarily disabled, the Speaker of the House of Representatives would act as Governor.</p> | <ul style="list-style-type: none"> The powers and duties of the Governor shall temporarily be discharged by the Lieutenant Governor If the Lieutenant Governor leaves office or becomes disabled, the Governor's powers and duties shall temporarily be discharged by the Senate President; If both the Lieutenant Governor and Senate President leave office or become disabled, the Governor's powers and duties shall temporarily be discharged by the Speaker of the House of Representatives |

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| What constitutes a vacancy in the office of Lieutenant Governor | Does not define what constitutes a vacancy but provides for the appointment of a new Lieutenant Governor if the office is vacated by death, resignation, or otherwise | States that a vacancy occurs when: <ul style="list-style-type: none"> the Lieutenant Governor dies, resigns, is removed by impeachment, becomes Governor, ceases to reside in the state, or becomes permanently disabled; or the Lieutenant Governor-elect fails to take office |
| What happens when there is a vacancy in the office of Lieutenant Governor | The Governor appoints a person to fill the vacancy | The Governor's appointment requires the consent of the Senate |
| Term for which a person appointed to fill a vacancy serves as Lieutenant Governor | Until a successor is elected and qualified | Until the first Monday in January after the following regular general election, if the vacancy occurs because the Lieutenant Governor becomes Governor; otherwise, for the remainder of the unexpired term |
| Determining the disability of the Lieutenant Governor | No process for determining the disability of a Lieutenant Governor | Establishes a process for determining the disability of the Lieutenant Governor |

Effective date

If approved by voters, Constitutional Amendment A takes effect January 1, 2009.

Fiscal impact

Enactment of this Amendment will not likely result in any increase or decrease in revenue to state or local government, but may result in a slight increase in costs to state and local governments if a mid-term election of both Governor and Lieutenant Governor is required.

ARGUMENT IN FAVOR

People should elect their leaders. In the event an elected governor steps aside or is no longer able to govern, this amendment allows Utahns the first-available opportunity to elect a successor.

- Representative Stephen Urquhart
District 75

ARGUMENT AGAINST

No argument submitted.

COMPLETE TEXT CONSTITUTIONAL AMENDMENT A

Utah Constitution Sections Affected:

AMENDS:

ARTICLE VII, SECTION 10

ARTICLE VII, SECTION 11

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

Section 1. It is proposed to amend Utah Constitution Article VII, Section 10, to read:

Article VII, Section 10. [Governor's appointive power -- Governor to appoint to fill vacancy in other state offices -- Vacancy in the office of the Lieutenant Governor.]

(1) (a) The Governor shall nominate, and by and with consent of the Senate, appoint all State and district officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for.

(b) If, during the recess of the Senate, a vacancy occurs in any State or district office, the Governor shall appoint some qualified person to discharge the duties thereof until the next meeting of the Senate, when the Governor shall nominate some person to fill such office.

(2) If the office of [~~Lieutenant Governor,~~] State Auditor, State Treasurer, or Attorney General be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to fill the same by appointment, from the same political party ~~of~~ as the removed person; and the appointee shall hold office until a successor shall be elected and qualified, as provided by law.

(3) (a) A vacancy in the office of Lieutenant Governor occurs when:

(i) the Lieutenant Governor dies, resigns, is removed from office following impeachment, becomes Governor under Article VII, Section 11, ceases to reside within the State, or is determined, as provided in Subsection (3)(b), to have a disability that renders the Lieutenant Governor unable to discharge the duties of office for the remainder of the

Lieutenant Governor's term of office; or

(ii) the Lieutenant Governor-elect fails to take office because of the Lieutenant Governor-elect's death, failure to qualify for office, or disability, determined as provided in Subsection (3)(b), that renders the Lieutenant Governor-elect unable to discharge the duties of office for the Lieutenant Governor-elect's full term of office.

(b) (i) Except when the disability of a Lieutenant Governor is determined under Article VII, Section 11, Subsection (6) because the Lieutenant Governor is acting as Governor under Article VII, Section 11, Subsection (5), the disability of a Lieutenant Governor or Lieutenant Governor-elect shall be determined by a written declaration stating that the Lieutenant Governor or Lieutenant Governor-elect is unable to discharge the powers and duties of the office.

(ii) The written declaration under Subsection (3)(b)(i) shall be transmitted to the Supreme Court and shall be signed by:

(A) the Governor; or

(B) (I) the Lieutenant Governor, if the Lieutenant Governor is the subject of the declaration; or

(II) the Lieutenant Governor-elect, if the Lieutenant Governor-elect is the subject of the declaration.

(iii) If the Lieutenant Governor or Lieutenant Governor-elect, as the case may be, disputes a declaration transmitted by the Governor under Subsection (3)(b)(i), the Lieutenant Governor or Lieutenant Governor-elect may, within ten days after the declaration is transmitted to the Supreme Court, file a petition requesting the Supreme Court to determine whether a disability exists as stated in the Governor's declaration.

(iv) In determining whether a disability exists, the Supreme Court shall follow procedures that the Court establishes, unless the Legislature by statute establishes procedures for the Supreme Court to follow in determining whether a disability exists.

v) A determination of disability under this Subsection (3)(b) is final and conclusive.

(c) (i) If a vacancy in the office of Lieutenant Governor occurs, the Governor shall,

with the consent of the Senate, appoint a person as Lieutenant Governor, to serve:
(A) except as provided in Subsection (3)(c)(i)(B), the remainder of the unexpired term;
or

(B) until the first Monday in January of the year following the next regular general election after the vacancy occurs, if the vacancy occurs because the Lieutenant Governor becomes Governor under Article VII, Section 11, Subsection (2).

(ii) The person appointed as Lieutenant Governor under Subsection (3)(c)(i) shall be from the same political party as the Governor.

(iii) Neither the President of the Senate nor the Speaker of the House of Representatives may, while acting as Governor under Article VII, Section 11, Subsection (4), appoint a person as Lieutenant Governor to fill a vacancy in that office.

Section 2. It is proposed to amend Utah Constitution Article VII, Section 11, to read:

Article VII, Section 11. [Vacancy in office of Governor -- Determination of disability.]

~~[In case of the death of the Governor, impeachment, removal from office, resignation, or disability to discharge the duties of the office, or in case of a Governor-elect who fails to take office, the powers and duties of the Governor shall devolve upon the Lieutenant Governor until the disability ceases or until the next general election, when the vacancy shall be filled by election. If, during a vacancy in the office of Governor, the Lieutenant Governor resigns, dies, is removed, or becomes incapable of performing the duties of the office, the President of the Senate shall act as Governor until the vacancy is filled or disability ceases. If in this case the President of the Senate resigns, dies, is removed, or becomes incapable of performing the duties of the office, the Speaker of the House shall act as Governor until the vacancy is filled or disability ceases. While performing the duties of the Governor as provided in this section, the Lieutenant Governor, the President of the Senate, or the Speaker of the House, as the case may be, shall be entitled to the salary and emoluments of the Governor, except in cases of temporary disability. The]~~

(1) A vacancy in the office of Governor occurs when:

(a) the Governor dies, resigns, is removed from office following impeachment, ceases to reside within the state, or is determined, as provided in Subsection (6), to have a disability that renders the Governor unable to discharge the duties of office for the remainder of the Governor's term of office; or

(b) the Governor-elect fails to take office because of the Governor-elect's death, failure to qualify for office, or disability, determined as provided in Subsection (6), that renders the Governor-elect unable to discharge the duties of office for the Governor-elect's full term of office.

(2) If a vacancy in the office of Governor occurs, the Lieutenant Governor shall become Governor, to serve:

(a) until the first Monday in January of the year following the next regular general election after the vacancy occurs, if the vacancy occurs during the first year of the term of office; or

(b) for the remainder of the unexpired term, if the vacancy occurs after the first year of the term of office.

(3) (a) In the event of simultaneous vacancies in the offices of Governor and Lieutenant Governor, the President of the Senate shall become Governor, to serve:

(i) until the first Monday in January of the year following the next regular general election after the vacancy occurs, if the vacancy occurs during the first year of the term of office; or

(ii) for the remainder of the unexpired term, if the vacancy occurs after the first year of the term of office.

(b) In the event of simultaneous vacancies in the offices of Governor, Lieutenant Governor, and President of the Senate, the Speaker of the House of Representatives shall become Governor, to serve:

(i) until the first Monday in January of the year following the next regular general election after the vacancy occurs, if the vacancy occurs during the first year of the term of office; or

(ii) for the remainder of the unexpired term, if the vacancy occurs after the first year of the term of office.

(4) If a vacancy in the office of Governor occurs during the first year of the term of

office, an election shall be held at the next regular general election after the vacancy occurs to elect a Governor and Lieutenant Governor, as provided in Article VII, Section 2, to serve the remainder of the unexpired term.

(5) (a) If the Governor is temporarily unable to discharge the duties of the office because of the Governor's temporary disability, as determined under Subsection (6), or if the Governor-elect is temporarily unable to assume the office of Governor because of the Governor-elect's temporary disability, as determined under Subsection (6), the powers and duties of the Governor shall be discharged by the Lieutenant Governor who, in addition to discharging the duties of the office of Lieutenant Governor, shall, without additional compensation, act as Governor until the disability ceases.

(b) (i) If, during a temporary disability of the Governor or Governor-elect, as determined under Subsection (6), a vacancy in the office of Lieutenant Governor occurs or the Lieutenant Governor is temporarily unable to discharge the duties of the office of Governor because of the Lieutenant Governor's temporary disability, as determined under Subsection (6), the powers and duties of the Governor shall be discharged by the President of the Senate who shall act as Governor until the Governor or Governor-elect's disability ceases or, in the case of the Lieutenant Governor's temporary disability, the Lieutenant Governor's disability ceases, whichever occurs first.

(ii) If, during a temporary disability of the Governor or Governor-elect, as determined under Subsection (6), neither the Lieutenant Governor nor the President of the Senate is able to discharge the duties of the office of Governor because of a vacancy in the office of Lieutenant Governor or President of the Senate, or both, or because of a temporary disability of either or both officers, as determined under Subsection (6), or a combination of vacancy and temporary disability, the powers and duties of the Governor shall be discharged by the Speaker of the House of Representatives who shall act as Governor until the Governor's disability ceases or

until the vacancy, if applicable, in the office of President of the Senate is filled or the temporary disability, if applicable, of the Lieutenant Governor or President of the Senate ceases, whichever occurs first.

(c) (i) During the time that the President of the Senate acts as Governor under this Subsection (5), the President may not exercise the powers and duties of President of the Senate or Senator. The powers and duties of President of the Senate may be exercised during that time by an acting President, chosen by the Senate.

(ii) During the time that the Speaker of the House of Representatives acts as Governor under this Subsection (5), the Speaker may not exercise the powers and duties of Speaker of the House of Representatives or Representative. The powers and duties of Speaker of the House of Representatives may be exercised during that time by an acting Speaker, chosen by the House of Representatives.

(d) When acting as Governor under this Subsection (5), the President of the Senate or Speaker of the House of Representatives, as the case may be, shall be entitled to receive the salary and emoluments of the office of Governor.

(6) (a) A disability of the Governor, Governor-elect, or person acting as Governor shall be determined by [either a]:

(i) the written declaration of the Governor, Governor-elect, or person acting as Governor, transmitted to the Supreme Court [by the Governor], stating an inability to discharge the powers and duties of the office; or [by]

(ii) a majority of the Supreme Court [or] upon the joint request of the President or, if applicable, acting President of the Senate and the Speaker or, if applicable, acting Speaker of the House of Representatives. [Such determination shall be final and conclusive. Thereafter, when the Governor transmits to the Supreme Court a written declaration that no disability exists, the]

(b) The Governor or person acting as Governor shall resume or, in the case of a Governor-elect, shall assume the powers and duties of the office following a temporary disability upon the written declaration of the Governor, Governor-elect, or person acting as

Governor, transmitted to the Supreme Court, that no disability exists, unless the Supreme Court, upon the joint request of the President or, if applicable, acting President of the Senate and the Speaker or, if applicable, acting Speaker of the House of Representatives, or upon its

own initiative, determines that the temporary disability continues and that the Governor, Governor-elect, or person acting as Governor is unable to discharge the powers and duties of the office. ~~[The Lieutenant Governor shall then continue to discharge these powers and duties as acting Governor.]~~

(c) Each determination of a disability under Subsection (6)(a) shall be final and conclusive.

(7) The Supreme Court has exclusive jurisdiction to determine all questions arising under this section.

Section 3. **Submittal to voters.**

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

Section 4. **Effective date.**

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2009.
